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Linko Plumbing and Heating, Inc. and Michael J. Castanaro. Case 4-CA-24652

August 22, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On January 8, 1997, the National Labor Relations Board issued an unpublished Order, inter alia, directing George Linko, Inc., whose correct name is Linko Plumbing and Heating, Inc., the Respondent,¹ to make Michael J. Castanaro whole for the loss of earnings and other benefits resulting from his unlawful discharge in violation of the National Labor Relations Act. On June 10, 1997, the United States Court of Appeals for the Third Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due Michael J. Castanaro, on May 24, 2001, the Regional Director for Region 4 issued a compliance specification and notice of hearing, which was subsequently amended on June 7, 2001, alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification and the amended compliance specification, the Respondent failed to file an answer.

By letter dated June 29, 2001, counsel for the General Counsel advised the Respondent that no answer to the compliance specification and the amended compliance specification had been received and that unless an appropriate answer was filed by July 6, 2001, summary judgment would be sought. The Respondent filed no answer.

On July 10, 2001, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On July 11, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

¹ Although the underlying case referred to the Respondent as "George Linko, Inc.," the General Counsel indicates in the compliance specification, the amended compliance specification, and the Motion for Summary Judgment that the correct name of the Respondent is "Linko Plumbing and Heating, Inc."

² No. 97-3263.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the amended compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the amended compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the amended compliance specification, and we will order payment by the Respondent of the amount to Michael J. Castanaro, plus interest accrued on that amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Linko Plumbing and Heating, Inc., Scranton, Pennsylvania, its officers, agents, successors, and assigns, shall make whole Michael J. Castanaro, by paying him the amount set forth below, plus interest on the backpay as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

Michael J. Castanaro \$51,933.29

Dated, Washington, D.C. August 22, 2001

Wilma B. Liebman, Member

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD